

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OHIO
EASTERN DIVISION**

DIGITAL MEDIA SOLUTIONS, LLC,)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO, LLC, <i>et al.</i> ,)	
)	
Defendants.)	

**AGREED ORDER SURRENDERING LEASED PREMISES TO ITS LANDLORD, 3601
SUNFLOWER LLC, RELIEVING INJUNCTION AND STAY AS AGAINST 3601
SUNFLOWER LLC AS TO THOSE LEASED PREMISES AND THE LEASE, AND
GRANTING RELATED RELIEF**

This matter came before the Court at the status conference on March 8, 2019, in this case. Among the persons in attendance in-person or telephonically were, among others, Mark E. Dottore, the receiver appointed in this case (the “Receiver”) under that certain *Order Appointing Receiver* dated January 18, 2019 [ECF No. 8, as amended by ECF No. 14] (the “Receiver Order”), and 3601 Sunflower LLC (“Sunflower”). The Court was informed by Receiver’s counsel that several of the Argosy campuses would be closing. On March 11, 2019, at the Hearing to Show Cause before the Court, the Receiver informed the Court that all of the Argosy campuses were closed. The Receiver has determined it is in the best interest of the receivership estate to take the following action and the Receiver and Sunflower agree as follows:

Sunflower, as landlord, and Argosy Education Group, LLC (“AEG”), as tenant, are parties to that certain *Lease Agreement* which currently expires June 30, 2020 (the “Lease”). Under the Lease, AEG leased a 55,000 square foot building, parking lot, and surrounding areas located at 3601 West Sunflower, Santa Ana, California (as more fully described in the Lease, the “Leased Premises”) that Sunflower owns, at which university classes were being offered by Argosy

University – Orange County (“AU-OC”). Both of AEG and AU-OC are subjects of this receivership under the Receiver Order.

On March 8, 2019, following the Status Conference in this matter, the Receiver indicated to Sunflower’s counsel that the university campus at the Leased Premises will close at 5:00 p.m. (Pacific time) on March 8, 2019, that one or more keys to the Leased Premises will be delivered to Sunflower at about that time, and that from and after March 8, 2019, no students, faculty, or other personnel (e.g., of AEG or AU-OC) will be present at the Leased Premises. On March 11, 2019, the Court further determined that the Leased Premises were surrendered to Sunflower as of March 11, 2019.

In light of the imminent closing of the university campus at the Leased Premises, the Receiver (on behalf of AEG and AU-OC) and Sunflower have agreed to the relief set forth below, so that Sunflower may better protect its rights and interests. Accordingly, it is hereby

ORDERED that:

- (1) Effective at 5:00 p.m. (Pacific time) on March 11, 2019 (the “Effective Date”),
 - (a) the Leased Premises and legal possession thereof shall be deemed surrendered voluntarily by AEG, as tenant under the Lease (and by AU-OC), to Sunflower, as landlord. Following the Effective Date, Sunflower may change the locks at the Leased Premises and take all desired steps to take possession of and secure the Leased Premises;
 - (b) all injunctive provisions and stays contained in the Receiver Order (including, without limitation, paragraphs 9, 10, 14, and, to the extent applicable, 20), including as it has been or hereafter may be amended, hereby are relieved and terminated as against Sunflower with respect to the Lease and the Leased Premises, such that Sunflower may exercise and enforce any and all rights and remedies relating to the Lease and the Leased Premises as are provided or permitted under the Lease and applicable law, all the same as if the Receiver Order had never been entered (including, without limitation, prosecuting an eviction proceeding in the event that the Receiver interferes with Sunflower’s right to retake and/or secure possession following the Effective Date);

- (2) Sunflower shall reasonably cooperate with the Receiver (on behalf of AEG, AU-OC, or both), or with the Receiver's designees, regarding the orderly disposition of any removable personal property or any student records that remain at the Leased Premises after the voluntary surrender in paragraph (1)(a) of this Order becomes effective so long as the Receiver takes immediate steps to dispose of the personal property and student records so that Sunflower can have full and complete access to the Leased Premises. Any personal property and/or records remaining at the Leased Premises after April 15, 2019, shall be deemed abandoned by the Receiver and the tenant under the Lease, and thereafter Sunflower may sell or dispose of such in Sunflower's sole discretion without liability to the Receiver, AEG, AU-OC, or anyone claiming by or through them;
- (3) Upon entry of this Order, Sunflower's Motion to Vacate the Injunction and Receiver Order, or, in the Alternative, to Modify the Scope of the Receiver Order and Injunction [ECF No. 54] and its Reply Brief in Support [ECF No. 135] are hereby deemed withdrawn;
- (4) This Court retains jurisdiction to enforce the terms and provisions of this Order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no just cause for delay.




Thomas M. Parker, United States Magistrate Judge
Electronically Signed at Cleveland, Ohio
12:06 PM, Mar 13, 2019

Submitted by:

/s/ William J. Stavole
WILLIAM J. STAVOLE (0040828)
william.stavole@tuckerellis.com
FREDERICK D. CRUZ (0093598)
frederick.cruz@tuckerellis.com
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113
Tel: 216.592.5000
Fax: 216.592.5009
Attorneys for 3601 Sunflower LLC

Agreed To:

/s/ Robert M. Stefancin via 3/12/19 email authority

MARY K. WHITMER (0018213)

mkw@weadvocate.net

JAMES W. EHRMAN (0011006)

jwe@weadvocate.net

ROBERT M. STEFANCIN (0047184)

rms@weadvocate.net

WHITMER & EHRMAN LLC

2344 Canal Road, Suite 401

Cleveland, Ohio 44113

Telephone: (216) 771-5056

Facsimile: (216) 771-2450

*Attorneys for Mark E. Dottore, the Receiver for
(among other entities) Argosy Education Group, LLC
and Argosy University – Orange County*